

# **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION**

## **ORDER BY CONSENT ISSUED TO**

**Valley Proteins, Inc.—Winchester Div.  
Winchester, Virginia  
Registration No: 80092**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and Valley Proteins, Inc.—Winchester Division, for the purpose of resolving certain alleged violations of environmental law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.

5. “Order” means this document, also known as a Consent Special Order.
6. “Valley” means Valley Proteins, Inc.—Winchester Division, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means Valley’s rendering facility located at 1635 Indian Hollow Road, Winchester, Virginia 22603.
8. “VRO” means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. “CFR” means Code of Federal Regulations.

### **SECTION C: Findings of Facts and Conclusions of Law**

1. Valley owns and operates the Facility, which is subject to applicable Regulations of the Board.
2. The provisions in Title 9, Chapter 80, Part II, Article 6 of the Virginia Administrative Code apply to the construction, reconstruction, relocation, and modification of any stationary source. Specifically, 9 VAC 5-80-1120.A provides that “No owner or other person shall begin actual construction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source.”
3. The provisions in Title 9, Chapter 80, Part II, Article 8 of the Virginia Administrative Code apply to permit procedures for major stationary sources and major modifications in Prevention of Significant Deterioration (PSD) areas. Specifically, 9 VAC 5-80-1720.A provides that “No owner or operator shall begin actual construction of any major stationary source or major modification without first obtaining from the board a permit to construct and operate such source.”
4. Valley is a “major stationary source” under sections 9 VAC 5-80-1110.C and 9 VAC 5-80-1710.C, located in a PSD area.
5. DEQ inspection on January 8, 2003, indicated that on or about December 31, 2002, Valley had installed and begun operation of a new Dupps model 320U continuous cooker unit at the facility, replacing an older, smaller continuous cooker, and adding several new air pollution control devices to reduce odorous emissions from process equipment without obtaining a permit under either 9 VAC 5-80-1100, et seq., or 9 VAC 5-80-1700, et seq.
6. Valley’s installation of the new cooker constituted a major modification of the facility because it increased the facility’s potential to emit SO<sub>2</sub>, a regulated air pollutant, by more than 40 tons per year pursuant to sections 9 VAC 5-80-1110.C and 9 VAC 5-80-1710.C.

7. “Potential to emit” is defined as “the *maximum capacity* of a stationary source to emit a pollutant under its *physical and operational design*” pursuant to sections 9 VAC 5-80-1110.C and 9 VAC 5-80-1710.C (emphasis supplied).
8. DEQ issued to Valley a Notice of Violation (NOV) dated February 4, 2003 alleging that Valley had violated 9 VAC 5-80-1100, et seq., and 9 VAC 5-80-1700, et seq., by installing the new continuous cooker without obtaining a permit from DEQ.

#### **SECTION D: Agreement and Order**

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders Valley and Valley agrees, to perform the corrective actions described in Appendix A of this Order. In addition, the Board orders Valley, and Valley voluntarily agrees to pay a civil charge of \$30,136.00 in settlement of the violations cited in this Order. Therefore:

1. Valley agrees to pay the amount of **\$30,136.00** of this civil charge within 30 days of the effective date of this Order. Payment must indicate that the civil charge is paid pursuant to this Order, and shall include Valley’s Federal Identification Number. Payment shall be by check, certified check, money order, or cashier’s check payable to “**Treasurer of the Commonwealth of Virginia**” and sent to:

**Receipts Control  
Department of Environmental Quality  
P. O. Box 10150  
Richmond, Virginia 23240**

2. Valley shall complete the corrective action described in Appendix A of this Order, which shall constitute a corrective action plan (CAP).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Valley, for good cause shown by Valley, or on its own motion after notice to Valley and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Valley admits to the allegations in Section C of this Order.
4. Valley consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Valley declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right of Valley to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Valley to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Valley shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Valley shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Valley shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Valley intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Valley. Notwithstanding the foregoing, Valley agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Valley. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Valley from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Valley voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Robert G. Burnley  
Department of Environmental Quality

Valley voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Valley, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## **APPENDIX A (Corrective Action Plan)**

1. Valley agrees to accept operational and emission limitations on its potential to emit to below major new source review (NSR) thresholds (e.g., less than 250 tons per year for each regulated pollutant) through a Permit issued under the state's "minor" NSR permit program, 9 VAC 5 Chapter 80, Article 6.
2. Until a new Permit is issued by DEQ, Valley agrees to operate the newly installed cooker (Dupps model 320U) with a raw material feed input not to exceed ~~1300~~ 1400 tons per week, calculated daily as the sum of ~~the previous consecutive 7-day period~~ daily inputs from Sunday through Saturday.
3. Valley shall operate all air pollution controls, including odor control devices, in accordance with manufacturer's recommendations.
4. Valley shall maintain records of the daily and weekly raw material feed input to the newly installed cooker (Dupps model 320U). Weekly raw material feed input shall be calculated ~~daily~~ weekly as the sum of ~~the previous consecutive 7-day period~~ daily inputs from Sunday through Saturday. Valley shall report weekly raw material feed input on a monthly basis.
5. Valley shall maintain a complete permit application and shall submit in a timely manner any additional information deemed necessary to issue the permit. Such information shall include but not be limited the following:
  - a. If Valley elects to revise the maximum capacity of the Dupps model 320U cooker based on recent information provided from Dupps, dated March 13, 2003, Valley shall submit a Revised Form 7;
  - b. Best Available Control Technology (BACT) analysis, as defined by 9 VAC 5-50-250 C, for each emission unit, including de-bottlenecked boilers (B1 and B2) with net emission increases equal to or exceeding the emission thresholds listed in 9 VAC 5-1320 D. In determining whether a BACT analysis is necessary Valley may rely on voluntary emission caps made enforceable through the Permit; and
  - c. An air quality analysis demonstrating compliance with National Ambient Air Quality standards (NAAQS) for any total net emission increase, including net emission increases from de-bottlenecked boilers (B1 and B2), equal to or exceeding "significant" emission rates as defined by 9 VAC 5-80-1710. In determining whether an air quality analysis is required, Valley may rely on anticipated emission reductions from the application of BACT in section 5.b., above, or voluntary emission caps made enforceable through the Permit.
6. Valley agrees that the application and Permit shall be subject to 9 VAC 5-80-1170 D and E, regarding Public Participation. Valley also agrees to comply with 9 VAC 5-80-1170 A and B, should any net emission increase, including net emission increases from de-bottlenecked boilers (B1 and B2), equal or exceed "significant" emission rates as defined by 9 VAC 5-80-1710.
7. A failure by Valley to comply with the above-stated compliance measures, or by failing to act with due diligence, may immediately terminate this Order pursuant to Section E, No. 8 of this Order.